

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Deborah Platt Majoras, Chairman
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

In the Matter of

NORTH TEXAS SPECIALITY PHYSICIANS,

a corporation.

Docket No. 9312

**COMPLAINT COUNSEL'S OPPOSITION TO MOTION OF THE VOLUNTARY
TRADE COUNCIL TO FILE AMICUS BRIEF**

Complaint counsel oppose the Voluntary Trade Council's ("VTC") motion because it is untimely. Rule 3.52(j) of the Commission's Rules of Practice provides in part:

Except as otherwise permitted by the Commission, an amicus curiae shall file its brief within the time allowed the parties whose position as to affirmance or reversal the amicus brief will support. The Commission shall grant leave for a later filing only for cause shown, in which event it shall specify within what period such brief must be filed.

Respondent's appeal brief was due on January 14, 2005. The VTC's motion and brief were filed more than five weeks later, on February 22, 2005.

The VTC's motion does not assert that good cause exists for its failure to comply with the Commission's deadline. Instead, it attempts to excuse its conduct by asserting that its brief "support[s] neither side." Motion at 2. The accompanying brief, however, argues that the Commission lacks authority to adjudicate the complaint against North Texas Specialty

Physicians (“NTSP”). This is an argument against affirmance of the initial decision and supporting NTSP’s “position as to affirmance or reversal.” (Indeed, NTSP in arguing against affirmance of the initial decision, also claims that the Commission lacks authority over its conduct, though it offers different reasons than the VTC).

Furthermore, since the arguments in the VTC’s brief will not assist the Commission in deciding any issue presented on appeal, there is no reason for the Commission to exercise its discretion to excuse the VTC’s late filing.

The VTC’s motion for leave to file an amicus brief should be denied as untimely. Should the Commission deny the motion, it may wish to direct the Office of the Secretary to treat the VTC’s filing, for record keeping purposes, as a public comment on a pending Commission proceeding, rather than as part of the adjudicative record in this case.

Respectfully submitted,



Theodore Zang, Jr.
Counsel Supporting the Complaint

Dated: February 28, 2005

CERTIFICATE OF SERVICE

I, Sarah Croake, hereby certify that on February 28, 2005, I caused a copy of the foregoing document to be filed with:

Office of the Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

and served by first-class mail upon:

Gregory S. C. Huffman, Esq.
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and by email upon the following: Gregory S.C. Huffman (gregory.huffman@tklaw.com), William Katz (william.katz@tklaw.com), and Gregory Binns (gregory.binns@tklaw.com);

and sent a courtesy copy by first-class mail to:

S.M. "Skip" Oliva
The Voluntary Trade Council
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Sarah Croake